

(4) At the conclusion of the on-site portion of the review process, the Departments reviewers shall hold an exit conference with facility representatives. Reviewers will share written findings for reviewed records.

41.23.4 Sanctions

The Department shall compute the quarterly facility average case mix index, as described in Section 80.3 of these principles. The following sanctions shall be applied to the allowable case mix adjusted direct care cost component for the subsequent quarter for all Medicaid residents of the facility, for which the following assessment review error rates are determined. Such sanctions shall be a percentage of the total direct care cost component after the case mix index and upper limit has been applied.

- (1) A 2% decrease in the total direct care cost component will be imposed when the NF assessment review results in an error rate of 35.853% or greater, but is less than 40.569%.
- (2) A 5% decrease in the total direct care cost component will be imposed when the NF assessment review results in an error rate of 40.569% or greater, but is less than 45.284%.
- (3) A 7% decrease in the total direct care cost component will be imposed when NF assessment review results in an error rate of 45.284% or greater, but is less than 50%.
- (4) A 10% decrease in the total direct care cost component will be imposed when the NF assessment review results in an error rate of 50% or greater.

41.23.5 Failure to complete reassessments by the nursing facility staff within 7 days of a written request by staff of the Bureau of Medical Services may result in the imposition of the deficiency per diem as specified in Principle 152 of these Principles of Reimbursement. Completed MDS assessments, as defined in Section 41.2, shall be submitted to the Department or its designee on the regular submission schedule, as outlined in Section 41.21.

41.23.6 Appeal Procedures: A facility may administratively appeal a Bureau of Medical Services rate determination for the direct care cost component. An administrative appeal will proceed in the following manner:

- (1) Within 30 days of receipt of rate determination, the facility must request, in writing, an informal review before the Director of the Bureau of Medical Services or his/her designee. The facility must forward, with the request, any and all specific information it has relative to the issues in dispute. Only issues presented in this manner and time frame will be considered at an informal review or at a subsequent administrative hearing.

(2) The Director of his/her designee shall notify the facility in writing of the decision made as a result of the informal review. If the facility disagrees with the results of the informal review, the facility may request an administrative hearing before the Commissioner or a presiding officer designated by the Commissioner. Only issues presented in the informal review will be considered at the administrative hearing. A request for an administrative hearing must be made, in writing, within 30 days of receipt of the decision made as a result of the informal review.

(3) To the extent the Department rules in favor of the facility, the rate will be corrected.

(4) To the extent the Department upholds the original determination of the Bureau of Medical Services, review of the results of the administrative hearing is available in conformity with the Administrative Procedures Act, 5 M.R.S.A. §11001 et seq.

41.3 Allowable costs for the Direct Patient Care component of the rate shall include:

41.31 Direct Patient Care Cost. The base year costs for direct patient care costs shall be the actual audited direct patient care costs incurred by the facility in the fiscal year beginning on or after October 1, 1992 (subject to upper limits). Bonuses are not recognized as allowable costs by the Department.

For nursing facilities that began their first year of operations in a fiscal year beginning on or after October 1, 1993 and are not subject to Section 80.6 of these Principles of Reimbursement the pro-forma cost report supplied with the approved certificate of need shall be the basis for computing the Medicaid rate; subject to upper limits in all cost components.

This determination will exclude any compensation that does not reasonably represent annual, ongoing wage and salary expenses. Contractual labor will be included in the calculation of the number of hours of labor provided in the base year. Costs for contractual labor in the base year will be an allowable cost up to the average hourly wage paid for similar staff within the nursing facility.

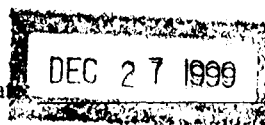
42 INDIRECT PATIENT CARE COST COMPONENT

42.1 Allowable cost for the Indirect Patient Care Cost component shall include reasonable costs associated with expenses related to indirect patient care. The base year costs for the indirect patient care component shall be the costs incurred by the facility in the fiscal year beginning on or after October 1, 1992. (subject to upper limits). Indirect patient care costs include:

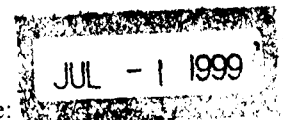
- 42.11 food, vitamins and food supplements,
- 42.12 director of nursing, and fringe benefits,
- 42.13 social services, and fringe benefits,
- 42.14 medical supplies, equipment and drugs which are supplied as part of the regular rate of reimbursement. See Maine Medical Assistance Manual, Section 67, Appendix #1. Excluded are costs which are an integral part of another cost center.

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42.14.1 Inventory items shall include, but are not limited to, medical supplies and food.

42.2 These types of consultative services will be considered as part of the allowable indirect patient care costs and be built into the base year indirect patient care cost components subject to the limitations outlined in subsections 42.21 - 42.23.

42.21 Pharmacist Consultants

Pharmacist consultant fees paid directly by the facility in the base year, will be included in the indirect patient care cost component for inclusion in the facilities per diem rate. In addition to any pharmacist consultant fees included in the base year rate, up to \$2.50 per month per resident shall be allowed for drug regimen review.

42.22 Dietary Consultants

Dietary Consultants professionally qualified, may be employed by the facility or by the Department. The allowable amounts paid by the nursing facility to Dietary Consultants in the base year when reasonable and non-duplicative of current staffing patterns will be built into the base year indirect patient care cost component for inclusion in the facilities per diem computation.

42.23 Medical Directors

The base year costs of a Medical Director, who is responsible for implementation of resident care in the facility, is an allowable cost. The base year allowable cost will be established and limited to \$1,200.

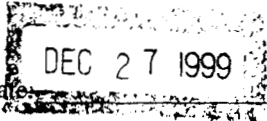
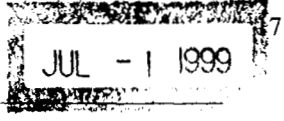
43 ROUTINE COST COMPONENT

All allowable costs not specified for inclusion in another cost category pursuant to these rules shall be included in the Routine cost component subject to the limitations set forth in these Principles. The base year costs for the routine patient care component shall be the costs incurred by the facility in the fiscal year beginning on or after October 1, 1992 (subject to upper limits).

43.1 Principle. All expenses which providers must incur to meet state licensing and federal certification standards are allowable.

43.2 All inventory items used in the provision of routine services to patients are required to be expensed in the year used. Inventory in excess of the amount used are not an allowable cost. Inventory items shall include, but are not limited to: linen and disposable items.

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43.3 Allowable costs shall also include all items of expense efficient and economical providers incur for the provision of routine services. Routine services means the regular room, dietary and nursing services, and the use of equipment and facilities.

43.4 Allowable costs for the Routine component of the rate shall include but not be limited to costs reported in the following functional cost centers on the facility's cost report.

- 43.41 fiscal services, (not to include accounting fees)
- 43.42 administrative services and professional fees not to exceed the administrative and management ceiling,
- 43.43 plant operation and maintenance including utilities,
- 43.44 grounds,
- 43.45 laundry and linen,
- 43.46 housekeeping,
- 43.47 medical records,
- 43.48 subscriptions related to patient care,
- 43.49 all employee education, except wages related to initial and on-going nurse aide training as required by OBRA,
- 43.410 dietary, excluding food,
- 43.411 motor vehicle operating expenses,
- 43.412 clerical,
- 43.413 transportation, (excluding depreciation),
- 43.414 office supplies/telephone,
- 43.415 conventions and meetings within the state of Maine,
- 43.416 EDP bookkeeping/payroll,
- 43.417 fringe benefits,
- 43.418 payroll taxes,
- 43.419 one association dues, the portion of which is not related to lobbying

See the explanations in Section 43.42.1 - 43.44 for a more complete description of allowable cost in each cost center.

43.42.1 Allowable Administration and Management Expenses.

43.42.11 Principle. A ceiling shall be placed on reimbursement for all compensation for administration and policy making functions and all expenses incurred for management and financial consultation, including accounting fees that are incurred by a related organization or the facility's operating company. Any compensation received by the individual who is listed as the administrator on the facility's license for any other services such as nursing, cooking, maintenance, bookkeeping and the like shall also be included within this ceiling.

This ceiling shall be increased quarterly by the inflationary factor as defined in Section 91 to reflect the rate of inflation from July 1, 1995 to the appropriate quarter. To establish the prospective rate for nursing facilities the administrative ceiling in effect at the beginning of a facility's fiscal year will apply to the entire fiscal year of that facility.

43.42.12 For fiscal years beginning on or after July 1, 1995, the statewide average professional accounting costs by bed size (0-30, 31-50, 51-100, over 100) will be included in the administrative and policy - planning ceiling. Only those reasonable, necessary and proper accounting costs which appropriate to the operation of patient care facilities are considered allowable accounting costs and will be included in the determination of the state wide average.

43.42.2 Ceiling. The administration and policy-planning ceiling that is in effect as of July 1, 1995 is listed below. The ceiling shall be increased quarterly to reflect the rate of inflation from July 1, 1995, to the appropriate quarter.

*up to 30 beds: \$37,772 plus \$637 for each licensed bed in excess of 10;

*31 to 50 beds: \$54,240 plus \$545 for each licensed bed in excess of 30;

*51 to 100 beds: \$67,432 plus \$364 for each licensed be in excess of 50; and

*over 100 beds: \$90,757 plus \$273 for each licensed bed in excess of 100.

In the case of an individual designated as administrator in more than one (1) facility, the Department shall combine the number of beds in these facilities and apply one hundred and twenty percent (120%) of the above schedule. The total allowance will be prorated to each facility based on the ratio of the facility's number of beds to the combined number of beds for all facilities under the direction of the administrator.

43.42.3 Administration Functions. The administration functions include those duties which are necessary to the general supervision and direction of the current operations of the facility, including, but not limited to, the following:

43.42.3.1 Central Office operational costs for business managers, controllers, reimbursement managers, office managers, personnel directors and purchasing agents are to be included in the administrative and policy-planning ceiling according to an allocation of those costs on the basis of all licensed beds operated by the parent company.

43.42.3.2 Policy Planning Function. The policy planning function includes the policy-making, planning and decision-making activities necessary for the general and long-term management of the affairs of the facility, including, but not limited to the following:

- a) financial management, including accounting fees
- b) establishment of personnel policies

- c) planning of patient admission policies
- d) planning of expansion and financing

43.42.3.3 This ceiling is not to include any Director of Nursing, Dietary Supervisor, or other department head, whose prime duties are not of an administrative nature but who may be responsible for hiring or purchasing for their Department.

43.42.3.4 All other regulations specific to administrative functions in Nursing Facilities that are included in State Licensing Regulations and all other State and Federal regulations.

43.42.4 Dividends and Bonuses. Bonuses, dividends, or accruals for the express purpose of giving additional funds to the administrator, owners, or other employees throughout the entire facility, whether or not they are part of the administrative and management ceiling, will not be recognized as allowable costs by the Department.

43.42.5 Management fees. Management fees charged by a parent company or by an unrelated organization or individual are not allowable costs and are not considered part of the administrative and management ceiling.

43.42.6 Corporate Officers and Directors. Salaries paid to corporate officers and directors are not allowable costs unless they are paid for direct services provided to the facility such as those provided by an administrator or other position required by licensing regulations and included in the staffing pattern which are necessary for that facility's operation.

43.42.7 Central Office Operational Costs. Central office bookkeeping costs and related clerical functions that are not included in the administration and policy-planning ceiling may be allocated to each facility on the basis of total patient census limited to the reasonable cost of bookkeeping services if they were performed by the individual facility.

43.42.7.1 All other central office operational costs other than those listed above in this principle are considered unallowable costs.

43.42.8 Laundry services including personal clothing for Medicaid patients.

43.42.9 Cost of Educational Activities

43.42.9.1 Principle. An appropriate part of the net cost of educational activities is an allowable cost. Appropriate part means the net cost of the activity apportioned in accordance with the methods set forth in these Principles. Expenses for education activities may be evaluated as to appropriateness, quality and cost and may or may not be included as an allowable cost based on the findings.

43.42.9.2 Orientation, On-the-Job Training, In-Service Education and Similar Work Learning. Orientation, on-the-job training, in-service education and similar work learning programs are not within the scope of this principle but, if provided by a staff person, are recognized as normal operating costs for routine services in accordance with the principles relating thereto.

43.42.9.3 Basic Education. Educational training programs which a staff member must successfully complete in order to qualify for a position or a job shall be considered basic education. Costs related to this education are not within the scope of reimbursement.

43.42.9.4 Educational Activities. Educational activities mean formally organized or planned workshops, seminars, or programs of study usually engaged in by the staff members of a facility in order to enhance the quality of resident care within the facility. These continuing education activities are distinguished from and do not include orientation, basic education programs, on-the-job training, in-service education and similar work learning programs.

43.42.10 Net Cost. The net cost means the cost of an activity less any reimbursement for them from grants, tuition and specific donations. These costs may include: transportation (mileage), registration fees, salary of the staff member if replaced, and meals and lodging as appropriate.

43.43 Motor Vehicle Allowance. Cost of operation of one motor vehicle necessary to meet the facility needs is an allowable cost less the portion of usage of that vehicle that is considered personal. A log which clearly documents that portion of the automobiles use for business purposes is required. Prior approval from the Division of Audit is required if additional vehicles are needed by the nursing facility.

43.44 Dues are allowed only if the nursing facility is able to provide auditable data that demonstrates what portion of the dues is not used for lobbying efforts by the agency receiving the dues payments.

43.5 Principle. Research Costs incurred for research purposes, over and above patient care, are not includable as allowable costs.

43.6 Grants, Gifts, and Income from Endowments

43.61 Principle. Unrestricted grants, gifts and income from endowments should not be deducted from operating costs in computing reimbursable costs. However, unrestricted Federal or State grants or gifts received by a facility will be used to reduce the operating costs of that facility. Grants, gifts, or endowment income designated by a donor for paying specific operating costs should be deducted from the operating costs or group of costs.

43.61.1 Unrestricted grants, gifts, income from endowment. Unrestricted grants, gifts, and income from endowments are funds, cash or otherwise, given to a provider without restriction by the donor as to their use.

43.61.2 Designated or restricted grants, gifts and income from endowments. Designated or restricted grants, gifts and income from endowments are funds, cash or otherwise, which must be used only for the specific purpose designated by the donor. This does not refer to grants, gifts or income from endowments which have been restricted for a specific purpose by the provider.

43.62 Donations of Produce or Other Supplies. Donations of produce or supplies are restricted gifts. The provider may not impute a cost for the value of such donations and include the imputed cost in allowable costs. If an imputed cost for the value of the donation has been included in the provider's costs, the amount included is deleted in determining allowable costs.

43.63 Donation of Use of Space. A provider may receive a donation of the use of space owned by another organization. In such case, the provider may not impute a cost for the value of the use for the space and include the imputed cost in allowable costs. If an imputed cost for the value of the donation has been included in the provider's cost, the amount included is deleted in determining allowable costs.

43.7 Purchase Discounts and Allowances and Refunds of Expenses.

43.71 Principle. Discounts and allowances received on purchases of goods or services are reductions of the costs to which they relate. Similarly, refunds of previous expense payments are reductions of the related expense.

43.71.1 Discounts. Discounts, in general, are reductions granted for the settlement of debts.

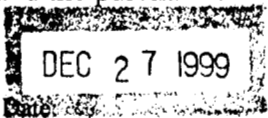
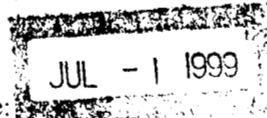
43.71.2 Allowances. Allowances are deductions granted for damages, delay, shortage, imperfections, or other causes, excluding discounts and returns.

43.71.3 Refunds. Refunds are amounts paid back or a credit allowed on account of an over-collection.

43.72 Reduction of Costs. All discounts, allowances, and refunds of expenses are reductions in the cost of goods or services purchased and are not income. When they are received in the same accounting period in which the purchases were made or expenses were incurred, they will reduce the purchases or expenses of that period. However, when they are received in a later accounting period, they will reduce the comparable purchases or expenses in the period in which they are received.

43.73 Application of Discounts Purchase discounts have been classified as cash, trade, or quantity discounts. Cash discounts are reductions granted for the settlement of debts before they are due. Trade discounts are reductions from list prices granted to a class of customers before consideration of credit terms. Quantity discounts are reductions from list prices granted because of the size of individual or aggregate purchase transactions. Whatever the classification of purchase discounts, like treatment in reducing allowable costs is required. In the past, purchase discounts were considered as financial management income. However, modern accounting theory holds that income is not derived from a purchase, but rather from a sale or an exchange, and the purchase discounts are reductions in the cost of

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whatever was purchased. The true cost of the goods or services is the net amount actually paid for them. Treating purchase discounts as income would result in an overstatement of costs to the extent of the discount.

43.74 All discounts, allowances, and rebates received from the purchases of goods or services and refunds of previous expense payments are clearly reductions in costs and must be reflected in the determination of allowable costs. This treatment is equitable and is in accord with that generally followed by other governmental programs and third-party organizations paying on the basis of costs.

43.8 Principle. Advertising Expenses. The reasonable and necessary expense of newspaper or other public media advertisements for the purpose of securing necessary employees is an allowable cost. No other advertising expenses are allowed.

43.9 Insurance. Reasonable and necessary costs of insurance involved in operating a facility are considered allowable costs (real estate insurance including liability and fire insurance are included as fixed costs - see subsection 44.1.4). Premiums paid on property not used for patient care are not allowed. Reasonable health insurance premiums on employees are an allowable cost. Qualified retirement plans and life insurance plans for employees are an allowable cost. Life insurance's premiums related to insurance on the lives of officers and key employees where the provider is a direct or indirect beneficiary are not allowable costs. A provider is a direct beneficiary where, upon the death of the insured officer or key employee the insurance proceeds are payable directly to the provider. An example of a provider as an indirect beneficiary is the case where insurance on the lives of officers is required as part of a mortgage loan agreement entered into for a building program, and, upon the death of an insured officer the proceeds are payable to the lending institution as a credit against the loan balance. In this case, the provider is not a direct beneficiary because it does not receive the proceeds directly, but is, nevertheless, an indirect beneficiary since its liability on the loan is reduced.

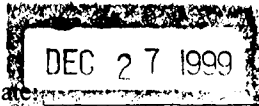
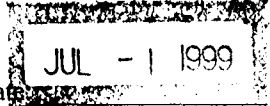
43.10 Legal Fees. Legal fees to be allowable costs must be directly related to patient care. Fees paid to the attorneys for representation against the Department of Human Services are not allowable costs. Retainers paid to lawyers are not allowable costs. Legal fees paid for organizational expenses, are to be amortized over a 60 month period.

43.11 Costs Attributable to Asset Sales. Costs attributable to the negotiation or settlement of a sale or purchase of any capital asset (by acquisition or merger) are not allowable costs. Included among such unallowable costs are: legal fees, accounting and administrative costs, appraisal fees, costs of preparing a certificate of need, banking and broker fees, good will or other intangibles, travel costs and the costs of feasibility studies.

43.12 Bad debts, charity, and courtesy allowances are deductions from revenue and are not to be included in allowable cost.

44 FIXED COSTS COMPONENT

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44.1 All allowable costs not specified for inclusion in another cost category pursuant to these rules shall be included in the Fixed Cost component subject to the limitations set forth in these Principles. The base year costs for the fixed cost component shall be the costs incurred by the facility in the most recently audited fiscal year. Fixed Costs include:

- 44.1.1 depreciation on buildings, fixed and movable equipment and motor vehicles,
- 44.1.2 depreciation on land improvements and amortization of leasehold improvements,
- 44.1.3 real estate and personal property taxes,
- 44.1.4 real estate insurance, including liability and fire insurance,
- 44.1.5 interest on long term debt,
- 44.1.6 return on equity capital for proprietary providers,
- 44.1.7 rental expenses,
- 44.1.8 amortization of finance costs,
- 44.1.9 amortization of start-up costs and organizational costs,
- 44.1.10 motor vehicle insurance,
- 44.1.11 facility's liability insurance, including malpractice costs and workers compensation,
- 44.1.12 administrator in training,
- 44.1.13 water & sewer fees necessary for the initial connection to a sewer system/water system,
- 44.1.14 portion of the acquisition cost for the rights to a nursing facility license.

See the explanations in Sections 44.2 - 44.10 for a more complete description of allowable costs in each of these cost centers.

44.2 Principle. An appropriate allowance for depreciation on buildings and equipment is an allowable cost. The depreciation must be:

44.2.1 Depreciation. Allowance for Depreciation Based on Asset Costs.

44.2.2 Identified and recorded in the provider's accounting records.

44.2.3 Based on historical cost and prorated over the estimated useful life of the asset using the straight-line method.

44.2.4 The total historical cost of a building constructed or purchased becomes the basis for the straight-line depreciation method. Component depreciation is not allowed except on those items listed below with their minimum useful lives:

Electric Components	20 years
Plumbing and Heating Components	25 years
Central Air Conditioning Unit	15 years

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